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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,411	10/16/2001	George H. Kitchen III	70008-9101	5840
5179	7590	10/05/2004	EXAMINER	
PEACOCK MYERS AND ADAMS P C			TOOMER, CEPHIA D	
P O BOX 26927			ART UNIT	
ALBUQUERQUE, NM 871256927			PAPER NUMBER	
			1714	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/981,411	<b>Applicant(s)</b> KITCHEN ET AL.	
	<b>Examiner</b> Cephia D. Toomer	<b>Art Unit</b> 1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/19/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 67-171 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67,68,74,76-79,98 and 162-171 is/are rejected.
- 7) ☒ Claim(s) 69-73,75,80-97 and 99-161 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 19, 2004 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 162-170 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner maintains that the limitation "an organometallic compound other than a platinum compound" is not supported by the original filed specification.

Applicant argues that the specification supports this limitation because of the alternative organometallic compounds that are recited in the specification.

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The specification supports only those compounds that are recited therein. If Applicant had intended to use other metals, such as palladium or sodium, such compounds should have been included in Applicant's exhaustive list. The examiner agrees that there is nothing inherently ambiguous or uncertain about negative limitations. However, the specification must support these negative limitations. Applicant did not state that the organometallic compounds of his invention were those of Group 3A, 7A or 8 and that he wished to exclude platinum, a Group 8 metal. Instead, Applicant recites "an organometallic compound other than a platinum compound." This limitation reads on every organometallic compound known to man. Clearly, Applicant is not claiming such a vast number of compounds since he clearly states that the organometallic compounds of the present invention are for used for catalysis purposes only.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 67, 77, 79, 162, 164 and 166 are rejected under 35 U.S.C. 102(b) as being anticipated by Hohr (US 4,955,331).

Hohr teaches a fuel additive concentrate comprising 1 to 100 ppm ferrocene (dicyclopentadienyl iron) and an aromatic solvent (see col. 2, lines 25-35). The required amount of the concentrate is added to the fuel (see col. 2, lines 35-37).

Accordingly, Hohr teaching all the limitations of the claims, anticipates the claims.

6. Claims 67, 68, 74, 76, 78, 79, 98, 162, 164, 166 and 169 are rejected under 35 U.S.C. 102(b) as being anticipated by Croudace (US 4,444,565).

Croudace teaches a fuel additive concentrate comprising dicyclopentadienyl iron (see abstract). The additive concentrate contains 1-50 grams per gallon and a diluent (see col. 3, lines 58-68). The iron content of the fuel is between 0.0001 and 10 grams per gallon of fuel (see col. 4, lines 60-64; col. 5, lines 20-36). The fuel may contain conventional stabilizing additives such as antioxidant, metal deactivators and anti-knock agent and manganese methyl cyclopentadienyl tricarbonyl (see col. 5, lines 40-51). The diluents include hydrocarbon solvents (see col. 6, lines 5-14).

Accordingly, Croudace teaching all the limitations of the claims anticipates the claims.

7. Claims 162-164, 166, 167 and 169-171 are rejected under 35 U.S.C. 102(b) as being anticipated by Cunningham (US 5,551,957).

Cunningham teaches a fuel additive comprising a dispersant, a fuel-soluble carrier (mineral oil lubricant), and a fuel soluble cyclopentadienyl manganese tricarbonyl (see abstract; col. 6, lines 12-23). The fuel contains 0.03125 of the manganese compound (see col. 2, lines 57-64) or from 0.0078-0.25 grams of manganese per gallon (see col. 9, lines 59-61).

Accordingly, Cunningham teaching all the limitations of the claims, anticipates the claims.

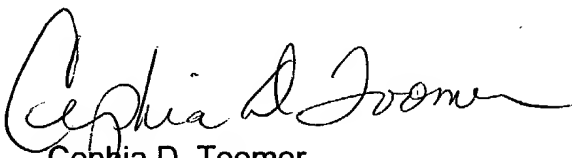
8. Claims 69-73, 75, 80-97 and 99-161 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Prior art fails to teach or suggest the claimed stabilizer, naphtha solvent, biocide and metal deactivator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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